



April 5, 2000

Ms. Katherine Minter Cary
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2000-1310

Dear Ms. Cary:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 133191.

The Crime Victims' Compensation Division of the Office of the Attorney General (the "attorney general") received a request for copies of the requestor's "progress notes" from the Woodlands Family Institute. You claim that the information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Access to mental health records is governed by provisions outside the Public Information Act. Chapter 611 of the Health and Safety Code provides for the confidentiality of records created or maintained by a mental health professional. Sections 611.002(a) and (b) read as follows:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Health and Safety Code § 611.002. Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We find that the submitted documents are mental health records that are confidential under section 611.002. The attorney general may release them only as provided by section 611.004 or 611.0045.

In the instant case, the requestor is seeking the disclosure of her own personal mental health records. Since the requestor is the “patient”, section 611.0045(a) gives the requestor a right of access to the requested information, except as provided by other subsections of section 611.0045. *See* Open Records Decision No. 565 at 3 (1990) (upon written consent of subject, mental health records must be released). Other subsections of section 611.0045 permit *a professional* to deny a patient access to any portion of that patient’s mental health records if *the professional* determines that release of that portion would be harmful to the patient’s physical, mental, or emotional health. Health & Safety Code § 611.0045(b). Additionally, section 611.0045(c) establishes the procedure that a professional must follow when denying a patient access to her own records.

You have not submitted to this office a signed and dated written statement from a “professional” specifying the records to which access is denied, the reason for the denial nor the duration of the denial. *See* Health & Safety Code § 611.0045(c). Since chapter 611 of the Health and Safety Code requires the professional to consider the potential impact on the patient's health, the attorney general must inform the professional of this request. The professional must make the determination required by the statute, and must state whether or not access is denied to part or all of the records. The professional must provide that decision in writing to the attorney general. If the professional decides not to deny access, then all of the records must be released. If the professional denies access only to a portion of the records, then the remainder of the records must be released. The attorney general must not release any of the records until the professional's written answer is received. If the professional denies access to any portion of the records, the professional must also submit a written denial of access to the requestor as required by section 611.0045(c) of the Health and Safety Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the

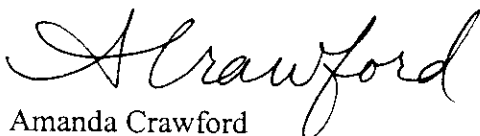
governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "A Crawford". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/nc

Ref: ID# 133191

Encl. Submitted documents